ALBERTA
LAW REFORM
INSTITUTE

REPORT ON A SUCCESSION CONSOLIDATION STATUTE

Final Report No. 87

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ALBERTA LAW REFORM INSTITUTE

The Alberta Law Reform Institute was established on January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta, and the Alberta Law Foundation.

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This report is somewhat unusual for the Institute in the sense that it is less concerned with proposing substantive law reforms, and more concerned with reorganizing the existing law in a rational and holistic way. Such a reorganization will bring together pieces of legislation which are scattered across the landscape, and by doing so hopefully present the legislation in a more rational way. It also sets the scene for further reform of individual areas within the overall landscape.

The genesis of this project arose when the Institute was involved in its project to modernize and rationalize the rules relating to estate administration. As a result of that project, the new Surrogate Rules and Forms were passed and are now, along with the ALRI/LESA Practice Manual, an important and integral part of estate practice.

At that time, it became apparent that there were approximately 60-odd statutes dealing with different aspects of succession and estate administration. The proliferation of statutory material represented a challenge because of its sheer bulk, but also gave significant opportunity for inconsistency or overlap, and made it difficult for practitioners to be absolutely certain that they had all of the necessary legislative material.

Anne de Villars, Q.C., then a special counsel to the Institute, and now a Board member, did the preliminary work on suggestions for rationalizing the succession legislation, and her original work has served as a very useful guide for this current report. In addition, one of our student researchers, Ms. Alicia Backman-Beharry, compiled a cross-Canada survey of succession legislation which has also served as a very useful research tool.

We have also had the benefit of a Project Advisory Committee which has assisted counsel in honing the recommendations and in developing the research.

We express our gratitude to the members of this committee who are:

Mr. W.C. Richard Davidson, Q.C., Davidson & Williams
Ms. Anne de Villars, Q.C., de Villars Jones
Mr. Alan D. Fielding, Q.C., Fielding Syed Smith & Throndson
Ms. Debra W. Hathaway, Alberta Law Reform Institute
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Ms. C. Suzanne McAfee, Office of the Public Trustee
Mr. Dennis J. Pelkie, Parlee McLaws
Madam Justice Bonnie L. Rawlins, Court of Queen's Bench
Mr. Philip J. Renaud, Duncan & Craig

Finally, even though every final report emanates as a recommendation of the Board of the Institute, it is the counsel in charge who takes on the primary research, writing, and analytical work involved with the development of a final report. This task fell to Ms. Debra Hathaway, whose research skill and drafting expertise presented the Board with a very clear picture from which to make its recommendations. We acknowledge with gratitude the comprehensiveness and clarity of Ms. Hathaway's work.

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PART I — EXECUTIVE SUMMARY

The law of succession in Alberta is scattered among many different statutes. Currently there are 93 provincial statutes that are entirely or partially relevant to some aspect or another of succession law. Some of this law is contained in separate statutes that deal exclusively with legal issues arising out of death (like the *Wills Act*). Some of it is contained in separate statutes that apply equally to situations involving the dead and the living (like the *Trustee Act*). There are also a great many individual statutory provisions that deal with the circumstances of death and succession in the specific context of a larger, comprehensive statutory scheme (like the *Workers' Compensation Act*).

Alberta is certainly not alone in having widely-dispersed succession law. Most Canadian jurisdictions have a similar situation. Three jurisdictions, however, have consolidated at least some of their core succession statutes into a single statute: Ontario, Prince Edward Island and (to a much lesser extent) Yukon.

Our Report advocates the consolidation of Alberta's core succession statutes into one Act. A single piece of consolidated legislation covering all the essentials of statutory succession law would be a convenient reference tool for the use of practitioners and the public. Rather than having to access several statutes, users would simply have to refer to one major piece of legislation. This will promote accessibility and ease of use of our statutory succession law.

To determine which statutes and provisions should be part of a consolidated Act, our Report uses three principles of selection derived from our analysis of the consolidated succession statutes found in other Canadian jurisdictions:

- Each selected legislative component must be relevant only to succession law. It must have no application to situations involving the living. Those "dual nature" statutes and provisions must continue to be easily located and used by persons who are not administering estates and this would not be the case if they were consolidated in a succession statute.

- Each selected legislative component must be independent, in the sense that its legal effectiveness is not dependent on its place in a wider, comprehensive statutory scheme. Nor should the comprehensiveness of a specialized statutory scheme be weakened by moving provisions to a succession statute.

- The succession statute should aim to consolidate succession law, not codify it. This means that the proposed statute will not be a "code" or exhaustive statement of the law in this area. There will continue to be other relevant succession provisions in other statutes.

Using these principles of selection, we recommend that Alberta's consolidated succession statute be mainly composed of the eight currently separate statutes that apply exclusively to succession law:

- *Administration of Estates Act*
- *Devolution of Real Property Act*
- *Family Relief Act*
- *Intestate Succession Act*
- *Survival of Actions Act*
- *Survivorship Act*
- *Wills Act*
- *Ultimate Heir Act.*

With two exceptions, we do not recommend consolidating all the many individual statutory provisions relating to succession that are found in comprehensive or specialized statutes. We advocate consolidating only a few independent provisions that can safely be moved from their current locations:

- section 47 of the *Trustee Act*
- selected sections from the *Law of Property Act*, Part 1 (Transfer and Descent of Land)

We also recommend that, when the government prepares the consolidated succession statute based on our narrative outline of its components, the government should also implement in that statute all the recommended reforms in the area of succession law that we have advocated in our reports since the late 1980s.

Appendix A of the Report contains our detailed research identifying all succession-related statutes and statutory provisions. Appendix B identifies Alberta legislation that is death-related but does not deal directly with succession issues.

PART II — LIST OF RECOMMENDATIONS

RECOMMENDATION No. 1
Alberta's core succession statutes should be consolidated into a single Act. 7

RECOMMENDATION No. 2
A consolidated succession statute should contain the following statutes and statutory provisions:

- *Administration of Estates Act*
- *Devolution of Real Property Act*
- *Family Relief Act*
- *Intestate Succession Act*
- *Survival of Actions Act*
- *Survivorship Act*
- *Wills Act*
- *Ultimate Heir Act*
- Section 47 of the *Trustee Act*
- Selected sections from the *Law of Property Act*, Part 1 (Transfer and Descent of Land) 17

RECOMMENDATION No. 3
A consolidated succession statute (and other statutes where needed) should implement the recommendations made by the Alberta Law Reform Institute in the following reports:

- Report No. 47, *Survivorship* (1991)
- Report No. 72, *Effect of Divorce on Wills* (1994)
- Report No. 78, *Reform of the Intestate Succession Act* (1999)
- Report No. 83, *Division of Matrimonial Property on Death* (2000)
- Report No. 84, *Wills – Non-compliance with Formalities* (2000)
- Forthcoming final recommendations arising out of Report for Discussion No. 14, *The Matrimonial Home* (1995) and Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* (2001) 18

PART III — REPORT

CHAPTER 1. INTRODUCTION

A. Issue

[1] Currently the law of succession in Alberta is scattered among many different statutes. This can make the law inaccessible and hard to use by anyone but the most expert of legal practitioners. Our Report identifies all the succession-related statutes and legislative provisions that currently exist in Alberta and examines whether it would be advisable to consolidate in a single statute the core legislation affecting succession. This Report also reiterates the need for implementation of our extensive previous recommendations for reform of succession law.

B. Project History

[2] Since the late 1980s, we have conducted numerous projects to review various aspects of the law of succession and have made many recommendations for reform.[1] Our review of the substantive law of succession is an ongoing commitment. In the future, we will undertake a number of further projects to recommend reform in the remaining areas of succession law with which we have not yet dealt. Those projects will be focussed on major individual issues or clusters

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[1] The previous Reports of the Alberta Law Reform Institute in the area of succession law are:

Report No. 47, *Survivorship* (1986)

Report No. 60, *Status of Children: Revised Report, 1991* (1991)

Report No. 68, *Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act* (1993)

Report No. 72, *Effect of Divorce on Wills* (1994)

Report No. 78, *Reform of the Intestate Succession Act* (1999)

Report No. 83, *Division of Matrimonial Property on Death* (2000)

Report No. 84, *Wills: Non-Compliance with Formalities* (2000)

Report for Discussion No. 14, *The Matrimonial Home* (1995)

Report for Discussion No. 17, *Division of Matrimonial Property on Death* (1998)

Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* (2001).

Two of our other Reports in this area are now too dated to be really useful anymore and we do not include them in our current considerations:

Report No. 29, *Family Relief* (1978)

Report No. 53, *Towards Reform of the Law Relating to Cohabitation Outside Marriage* (1989).

of issues within such areas as wills, administration of estates, family relief and effect of beneficiary designations.

[3] Originally, we intended to recommend consolidated legislation by preparing a draft model statute once our substantive reform recommendations were completed in all areas of succession law. In other words, our recommendation of consolidated legislation would come at the end of the process. Our current thought, however, is that it would be more helpful to make this recommendation sooner rather than later, as we strongly believe in the need for, and practical utility of, a consolidated statute.

[4] Therefore, we will outline in narrative form (rather than in draft legislative form) which statutes and statutory provisions we recommend should form the component parts of a consolidated statute (whether or not we have yet addressed substantive reform of those component parts). A narrative format will not hinder the government from implementing this recommendation by having its Office of Legislative Counsel prepare the necessary consolidated legislation.

[5] Detailed research to identify all succession-related statutes and statutory provisions has been conducted and is contained in this Report. The opinions and advice of our Succession Project Advisory Committee members enhanced the preparation of this Report and we thank them for their valuable contribution.

C. Report Outline

[6] This Report is divided into four chapters and two appendixes. Chapter 1 is introductory. Chapter 2 discusses the need for reform. Consolidated legislation from other Canadian jurisdictions is examined in Chapter 3 and principles of selection are adopted to determine what statutes and statutory provisions should be included or excluded. Chapter 4 recommends what our consolidated succession statute should contain. Appendix A is an alphabetical list that identifies and summarizes relevant Alberta succession legislation. Appendix B identifies and summarizes Alberta legislation that is death-related but does not deal directly with succession issues.

[7] We have also taken the information contained in Appendix A and organized it in an alternative format according to broad subject area. For those who might be interested, the document is found on our website: *http://www.law.ualberta.ca/alri/*.

CHAPTER 2. NEED FOR REFORM

A. Alberta Statutory Provisions Relevant to Succession

[8] As already noted, the law of succession in Alberta is scattered among many different statutes. Our research indicates that currently there are 93 provincial statutes that are entirely or partially relevant to some aspect or another of succession law.

[9] Some of this law is contained in separate statutes that deal exclusively with legal issues arising out of death, such as the *Wills Act*,[2] the *Administration of Estates Act*[3] and the *Family Relief Act*.[4] Some of this law is contained in separate statutes that apply equally to situations involving the dead and the living, such as the *Perpetuities Act*,[5] the *Minors' Property Act*[6] and the *Trustee Act*.[7] There are also a great many individual statutory provisions that deal with the circumstances of death and succession in the specific context of a larger, comprehensive statutory scheme, such as the *Insurance Act*,[8] the *Land Titles Act*[9] and the *Workers' Compensation Act*.[10]

[10] Appendix A to this Report lists these statutes alphabetically and summarizes their effects.

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[2] R.S.A. 2000, c. W-12.

[3] R.S.A. 2000, c. A-2.

[4] R.S.A. 2000, c. F-5.

[5] R.S.A. 2000, c. P-5.

[6] R.S.A. 2000, c. M-18.

[7] R.S.A. 2000, c. T-8.

[8] R.S.A. 2000, c. I-3.

[9] R.S.A. 2000, c. L-4.

[10] R.S.A. 2000, c. W-15.

[11] Alberta statutes also contain a number of provisions that are death-related but do not, however, directly deal with succession issues. Appendix B lists the main examples of these types of provisions in the following categories:

- Certain provisions concerning confidentiality
- Provisions regulating death-related industries
- Provisions authorizing pensions
- Miscellaneous provisions

B. Need for Reform

[12] Alberta is certainly not alone in having widely-dispersed succession law. The succession law of every Canadian province and territory is scattered, to a greater or lesser extent, throughout their statutes. For their legislation that relates exclusively to succession, most of those jurisdictions maintain the same separate types of Acts as Alberta. Three jurisdictions, however, have consolidated at least some of their core succession statutes into a single statute: Ontario,[11] Prince Edward Island[12] and (to a much lesser extent) Yukon.[13] (Chapter 3 will discuss the contents of these consolidated statutes in detail).

[13] We believe that it would be useful to consolidate Alberta's core succession statutes into one Act. A single piece of consolidated legislation covering all the essentials of statutory succession law in Alberta would be a convenient reference tool for the use of practitioners and the public. Rather than having to access several statutes, users would simply have to refer to one major piece of legislation. This will promote accessibility and ease of use of our statutory succession law. (A good example from existing Alberta law of how useful it can be to consolidate legislation is the *Municipal Government Act*,[14] the creation of which consolidated 21 separate statutes that previously governed all aspects of municipal affairs).[15]

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[11] *Succession Law Reform Act*, R.S.O. 1990, c. S-26.

[12] *Probate Act*, R.S.P.E.I. 1988, c. P-21.

[13] *Estate Administration Act*, S.Y. 1998, c. 7.

[14] R.S.A. 2000, c. M-26.

[15] *Municipal Government Act*, S.A. 1994, c. M-26.1, s. 644.

RECOMMENDATION No. 1
Alberta's core succession statutes should be consolidated into a single Act.

CHAPTER 3. COMPONENTS OF A CONSOLIDATED STATUTE

[14] Which statutes and statutory provisions should form the components of a consolidated succession statute in Alberta? In considering this question, it is instructive to see what has been included (and excluded) from the consolidated statutes of Ontario, Prince Edward Island and Yukon. As already noted, these are the three Canadian jurisdictions that already have some form of consolidated succession legislation.

A. Other Canadian Models

1. Ontario

[15] Ontario's *Succession Law Reform Act*[16] has five parts, covering the following areas:

- Part 1: Testate Succession (equivalent to a *Wills Act*, including provisions covering conflicts and international wills).
- Part 2: Intestate Succession (equivalent to an *Intestate Succession Act*).
- Part 3: Designation of Beneficiaries of Interest in Funds or Plans (analogous to Alberta's *Trustee Act*,[17] section 47).
- Part 4: Survivorship (equivalent to a *Survivorship Act*), and
- Part 5: Support of Dependants (equivalent to a *Family Relief Act*).

[16] Excluded from this consolidated Act are several other notable areas of succession law, for which Ontario continues to maintain separate statutes, including procedure for obtaining a grant of probate or administration,[18] duties of executors and administrators,[19] administration of estates generally,[20] law relating to

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[16] *Supra* note 11.

[17] *Supra* note 7.

[18] *Estates Act*, R.S.O. (1990), c. E-21.

[19] *Ibid.*

[20] *Estates Administration Act*, R.S.O. (1990), c. E-22.

trusts and trustees,[21] law relating to accumulations and perpetuities[22] and law governing escheats.[23]

2. Prince Edward Island

[17] Prince Edward Island's *Probate Act*[24] has seven parts, covering the following areas:

- Part I: General Provisions (jurisdiction of the Estates Section of the Trial Division of Prince Edward Island's Supreme Court, handling of estate debts by personal representatives, including priorities, and authority of Rules Committee to make rules of practice and procedure for probate and estate matters),
- Part II: Procedure (equivalent to an *Administration of Estates Act* addressing procedure for obtaining a grant of probate or administration, resealing, general administration of an estate and duties of executors and administrators),
- Part III: Wills (equivalent to a *Wills Act*),
- Part IV: Distribution of Estates of Intestates (equivalent to an *Intestate Succession Act*),
- Part V: Devolution of Real Property (equivalent to a *Devolution of Real Property Act*),
- Part VI: Fees and Returns (probate fees, etc.),
- Part VII: International Wills (equivalent to provisions, including schedules, typically found in a *Wills Act*).

[18] Prince Edward Island's consolidated Act includes and excludes a different mix of succession statutes than Ontario does. Prince Edward Island's Act covers (in Parts I and II) jurisdictional and administration of estates provisions not consolidated in Ontario, but the P.E.I. Act excludes provisions addressing designation of beneficiaries, survivorship and family relief, all of which are consolidated in the Ontario statute.

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[21] *Trustee Act*, R.S.O. 1990, c. T-23; *Variation of Trusts Act*, R.S.O. 1990, c. V-1.

[22] *Accumulations Act*, R.S.O. 1990, c. A-5; *Perpetuities Act*, R.S.O. 1990, c. P-9.

[23] *Escheats Act*, R.S.O. 1990, c. E-20.

[24] *Supra* note 12.

[19] Prince Edward Island continues to maintain a number of separate statutes to address other areas of succession law, including designation of beneficiaries,[25] survivorship,[26] family relief,[27] survival of actions,[28] trusts and trustees,[29] perpetuities[30] and escheats.[31]

3. Yukon

[20] Yukon's *Estate Administration Act*[32] is the least comprehensive of the consolidated statutes. It combines provisions governing the general administration of estates with provisions concerning intestate succession. The Act has twelve parts, covering the following areas:

- Part 1: General,
- Part 2: Grants of Administration (with or without a will annexed),
- Part 3: Revocation and Renunciation (of both executors and administrators),
- Part 4: Discharge of Personal Representatives,
- Part 5: Public Administrator,
- Part 6: Proof of Wills in Solemn Form,
- Part 7: Powers, Duties and Liabilities of Executors and Administrators,
- Part 8: Provision for Common-law Spouses (a court may order support for a common law spouse from an intestate's estate),
- Part 9: Disposition of Real Estate,
- Part 10: Distribution of Intestate Estates (equivalent to an *Intestate Succession Act*),
- Part 11: Insolvent Estates (priorities, secured creditors, etc.),

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[25] *Designation of Beneficiaries Under Benefit Plans Act*, R.S.P.E.I. 1988, c. D-9.

[26] *Commorientes Act*, R.S.P.E.I. 1988, c. C-12.

[27] *Dependants of a Deceased Person Relief Act*, R.S.P.E.I. 1988, c. D-7.

[28] *Survival of Actions Act*, R.S.P.E.I. 1988, c. S-11.

[29] *Trustee Act*, R.S.P.E.I. 1988, c. T-8; *Variation of Trusts Act*, R.S.P.E.I. 1988, c. V-1.

[30] *Perpetuities Act*, R.S.P.E.I. 1988, c. P-3.

[31] *Escheats Act*, R.S.P.E.I. 1988, c. E-10.

[32] *Supra* note 13.

- Part 12: Procedure and Evidence (applications for a grant of probate or administration, power of court to order production of testamentary document, evidence of will in real property cases, opening safety deposit boxes, etc.).

[21] Since this consolidated Act combines so few areas, Yukon still has a wide assortment of separate succession statutes, including Acts that address wills and testate succession,[33] family relief,[34] devolution of real property,[35] perpetuities,[36] survival of actions,[37] survivorship[38] and trusts and trustees.[39]

B. Principles of Selection

[22] Although Ontario, Prince Edward Island and Yukon use a different mix of legislative components in each of their consolidated succession statutes, it is possible to discern some general principles of selection based on the shared characteristics of those consolidated statutes. We adopt these principles as the basis for deciding what to include and exclude from our proposed consolidated succession statute.

1. Exclusive relevance to succession law

[23] Each selected legislative component must be relevant only to succession law. It must have no application to situations involving the living.

[24] Some statutes have a dual nature and their provisions impact the rights and property of both living people and estates, such as legislation concerning minors' property, legitimacy of children, perpetuities, trusts and trustees. But even though a particular statute might be very important when dealing with an estate, it should be

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[33] *Wills Act*, R.S.Y. 1986, c. 179.

[34] *Dependants Relief Act*, R.S.Y. 1986, c. 44.

[35] *Devolution of Real Property Act*, R.S.Y. 1986, c. 45.

[36] *Perpetuities Act*, R.S.Y. 1986, c. 129.

[37] *Survival of Actions Act*, R.S.Y. 1986, c. 166.

[38] *Survivorship Act*, R.S.Y. 1986, c. 167.

[39] *Trustee Act*, R.S.Y. 1986, c. 173; *Variation of Trusts Act*, R.S.Y. 1986, c. 174.

excluded from the consolidated legislation if it must also be located and used by people who are not administering estates. The alternative would be to duplicate the statute in the consolidated legislation for the purpose of succession and yet maintain it as a separate statute for the purpose of its other applications. However, such duplication would promote confusion and would also be bad legislative drafting.

2. Independent provisions

[25] Each selected legislative component must be independent, in the sense that its legal effectiveness is not dependent on its place in a wider, comprehensive statutory scheme.

[26] Many Acts have a handful of provisions that are exclusively relevant to succession, but effective legal use of those provisions is predicated on the presence of the larger legislative framework found in the rest of that Act. For example, the death benefit provisions of a *Workers' Compensation Act* could not simply be lifted out of that statute and placed by themselves in a separate consolidated succession statute. Those individual provisions are meaningless without the wider statutory context defining who is an employer and a worker, determining what constitutes an employment-related accident, removing the right to sue in return for compensation, specifying how benefits are to be calculated and establishing a regulatory body to administer the system.

[27] Since it is neither feasible nor desirable to duplicate such supporting legislative frameworks in a consolidated succession Act, it is better to simply exclude such non-independent provisions and leave them in their original statute.

[28] Even in those rare cases where a succession-related provision in a larger statute might be considered sufficiently independent so that it could be removed from the larger statute without causing interpretation problems, removing it from the original statute weakens the comprehensiveness of that Act for its particular group of users. It is not really progress to promote the comprehensiveness of a general succession consolidation statute by reducing the comprehensiveness of various specialized statutory schemes.

3. Consolidation, not codification

[29] Using the first two principles of selection results in a consolidation, not codification, of succession law. A codification of the law means that there is no need to look beyond the statute for relevant law because the statute contains it all. It is a complete code. A consolidation of the law means that the most important relevant statutory provisions are gathered together in a single Act, but it is not an exhaustive statement of the law in this area. There will continue to be other relevant statutory provisions. As previously noted, Ontario, Prince Edward Island and Yukon all still have numerous separate succession-related statutes and statutory provisions in addition to their consolidated succession Acts.

[30] Could a consolidated succession statute at least provide a guide to all the relevant unconsolidated legislative provisions found in other, separate statutes by listing them or cross-referencing them somehow? Statutes are drafted exclusively for the purpose of enacting law and are not designed to serve a general reference function. Lists and cross-references are not enacted unless they are necessary and integral to the legal functioning of the statute in which they are enacted. That would not be the case here.

[31] Even from a purely practical point of view, it is better for any reference function concerning statutes to be contained in non-legislated documents. To be genuinely useful, a list of all statutory provisions concerning succession must be comprehensive and current. The list would require constant monitoring and frequent revision to stay that way. It is neither practical nor viable for the legislative process to perform that function.

[32] If such a list would be useful to practitioners of succession law, it would be more feasible and appropriate to have it prepared, monitored, regularly revised and published as a project of the Legal Education Society of Alberta or the Wills and Trusts/Estates section of the Canadian Bar Association (Alberta Branch). The Appendixes to our Report could form the basis of the initial list.

CHAPTER 4. RECOMMENDED CONSOLIDATED STATUTE

A. Components

[33] Using the principles of selection discussed in Chapter 3, we recommend that Alberta's consolidated succession statute be mainly composed of the eight currently separate statutes that apply exclusively to succession law: the *Administration of Estates Act*,[40] *Devolution of Real Property Act*,[41] *Family Relief Act*,[42] *Intestate Succession Act*,[43] *Survival of Actions Act*,[44] *Survivorship Act*,[45] *Wills Act*[46] and *Ultimate Heir Act*.[47] This combines more areas of succession law than other Canadian jurisdictions have typically undertaken, but we see no reason why a consolidated statute cannot address diverse areas. More importantly, these eight Acts are the core statutes of succession law and placing them together maximizes the usefulness of a consolidated statute.

[34] With two exceptions, we do not recommend consolidating all the many individual statutory provisions relating to succession that are found in comprehensive statutes governing specialized areas. It is true that many of these provisions are very important succession provisions, such as those concerning dower, insurance, compensation and other benefits available on death, matrimonial property claims after death and pensions, but they cannot be easily removed from the interrelated context of their original statutes. For the reasons discussed in Chapter 3, it is better to leave those provisions in their Acts of origin.

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[40] *Supra* note 3.

[41] R.S.A. 2000, c. D-12.

[42] *Supra* note 4.

[43] R.S.A. 2000, c. I-10.

[44] R.S.A. 2000, c. S-27.

[45] R.S.A. 2000, c. S-28.

[46] *Supra* note 2.

[47] R.S.A. 2000, c. U-1.

[35] The two exceptions we would make to this general rule concern a very limited number of independent provisions from a couple of statutes. The first succession-related provision that we recommend can (and should) be taken from its original Act and moved to the consolidated Act is section 47 of the *Trustee Act*[48] concerning the general designation of beneficiaries under private or statutory pension plans, R.R.S.P.s, annuity funds, etc. This section is not at all dependent on the rest of the *Trustee Act* for its meaning or effect and indeed, its presence seems awkward in that statute anyway. It is an important modern provision affecting succession law and should be centrally located in a consolidated statute.

[36] The second exception concerns most of the eight provisions currently found in the *Law of Property Act*, Part 1 (Transfer and Descent of Land).[49] These sections form a discrete block of provisions unrelated to the rest of that Act. To the extent that a section deals solely with descent of land after death, we recommend that it be removed from the *Law of Property Act* and placed in the consolidated succession statute. This would be the case with sections 2, 3 and 4 of the *Law of Property Act*. To the extent that a section deals both with descent of land after death and transfer of land before death, we recommend that it be duplicated in both statutes with appropriate amendments so that the section in the *Law of Property Act* will deal solely with transfer before death and the section in the succession consolidation statute will deal solely with descent after death. This would be the case with sections 5, 7(3), 8 and 9. To the extent that a section deals solely with transfer of land before death, it should remain in the *Law of Property Act* and have no counterpart in the succession consolidation statute. This would be the case with sections 6 and 7(1) and (2).

[37] It seems to us that these few provisions concerning descent of land after death would be more usefully located in the consolidated succession statute along with the provisions from the *Devolution of Real Property Act*.[50]

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[48] *Supra* note 7.

[49] R.S.A. 2000, c. L-7, ss. 2-9.

[50] *Supra* note 41.

RECOMMENDATION No. 2
A consolidated succession statute should contain the following statutes and statutory provisions:

- ***Administration of Estates Act***
- ***Devolution of Real Property Act***
- ***Family Relief Act***
- ***Intestate Succession Act***
- ***Survival of Actions Act***
- ***Survivorship Act***
- ***Wills Act***
- ***Ultimate Heir Act***
- **Section 47 of the *Trustee Act***
- **Selected sections from the *Law of Property Act*, Part 1 (Transfer and Descent of Land)**

B. Implementation of Previous Recommendations

[38] As discussed in Chapter 1, we have issued many reports and made many recommendations for reform of succession law since the late 1980s.[51] Two of our reports have been implemented[52] but the rest have not yet been enacted.[53] Many of the remaining reports' recommendations could be implemented in the appropriate component parts of our proposed consolidated succession statute. A minority would require amendment of legislation which would not form part of the consolidated statute (such as the *Matrimonial Property Act*[54] and *Dower Act*),[55] but some aspects of the consolidated Act would also be consequentially amended. In addition to our previous reports, we will be making final recommendations arising

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[51] *Supra* note 1.

[52] Our Report No. 60, *Status of Children: Revised Report, 1991* (1991) was implemented by the *Family and Domestic Relations Statutes Amendment Act, 1991*, S.A. 1991, c. 11. Our Report No. 68, *Beneficiary Designations: RRSPs, RRIFs and Section 47 of the Trustee Act* (1993) was implemented by *Miscellaneous Statutes Amendment Act, 1994*, S.A. 1994, c. 23, s. 46.

[53] A private member's bill has recently been introduced that is based on our recommendations in Report No. 83, *Division of Matrimonial Property on Death* (2000): Bill 210, *Matrimonial Property (Division of Property on Death) Amendment Act, 2002*, 2d Sess., 25th Leg., Alberta, 2002.

[54] R.S.A. 2000, c. M-8.

[55] R.S.A. 2000, c. D-15.

out of two Reports for Discussion[56] concerning aspects of succession law and those could be implemented as well, both in the consolidated statute and elsewhere as required.

RECOMMENDATION No. 3
A consolidated succession statute (and other statutes where needed) should implement the recommendations made by the Alberta Law Reform Institute in the following reports:

- **Report No. 47, *Survivorship* (1991)**
- **Report No. 72, *Effect of Divorce on Wills* (1994)**
- **Report No. 78, *Reform of the Intestate Succession Act* (1999)**
- **Report No. 83, *Division of Matrimonial Property on Death* (2000)**
- **Report No. 84, *Wills – Non-compliance with Formalities* (2000)**
- **Forthcoming final recommendations arising out of Report for Discussion No. 14, *The Matrimonial Home* (1995) and Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* (2001)**

C. Organization

[39] A consolidated *Succession and Estates Act* could be organized in the following manner:

Part 1 – Testate Succession

- *Wills Act*, Parts 1 (General) and 2 (Conflicts of Law) as amended by implementation of our recommendations in Report No. 72, *Effect of Divorce on Wills* (1994) and Report No. 84, *Wills – Non-compliance with Formalities* (2000)

- *Trustee Act*, s. 47

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[56] Report for Discussion No. 14, *The Matrimonial Home* (1995) and Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* (2001).

Part 2 – Intestate Succession

- *Intestate Succession Act* as amended by implementation of our recommendations in Report No. 78, *Reform of the Intestate Succession Act* (1999)

- *Ultimate Heir Act*

Part 3 – Family Relief

- *Family Relief Act*[57]

Part 4 – Administration of Estates

- *Administration of Estates Act* as amended by implementation of our recommendations in Report No. 83, *Division of Matrimonial Property on Death* (2000) and the final recommendations we will be making arising out of Report for Discussion No. 19, *Order of Application of Assets in Satisfaction of Debts and Liabilities* (2001)

Part 5 – Devolution of Real Property

- *Devolution of Real Property Act*

- *Law of Property Act*, ss. 2, 3, 4 and (amended to deal solely with descent of land) ss. 5, 7(3), 8 and 9.

Part 6 – Survivorship

- *Survivorship Act* as amended by implementation of our recommendations in Report No. 47, *Survivorship* (1986)

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[57] The *Family Relief Act* will be renamed the *Dependants Relief Act* on proclamation of the *Adult Interdependent Relationships Act*, S.A. 2002, c. A-4.5, s. 35(2). When that happens, Part 3 of our proposed consolidated statute should be accordingly retitled "Dependants Relief".

Part 7 – Survival of Actions

- *Survival of Actions Act*

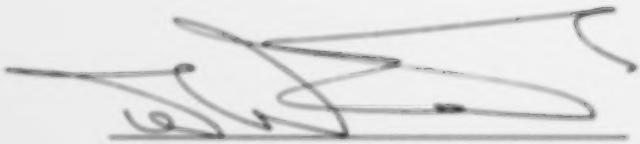
Part 8 – International Wills

- *Wills Act*, Part 3 (International Wills)

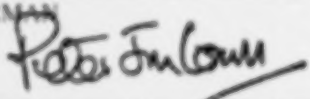
Schedule

- re International Wills

C.W. DALTON
A. DE VILLARS
A.D. FIELDING
N.A. FLATTERS
P. HUGHES
W.H. HURLBURT
H.J.L. IRWIN
P.J.M. LOWN
A.D. MACLEOD
D.R. OWRAM
B.L. RAWLINS
W.N. RENKE
D.R. STOLLERY
N.C. WITTMANN



CHAIRMAN



DIRECTOR

APPENDIX A

ALBERTA STATUTORY PROVISIONS RELEVANT TO SUCCESSION

ALPHABETICALLY

* A *

Administration of Estates Act (A-2)

Entire Act is relevant exclusively to succession. It addresses how to apply for a grant of probate or administration, resealing of foreign grants, general administration of estates, accounting and rights and liabilities of executors and administrators.

Adult Adoption Act (A-4)

Section 9(4) provides that in any testamentary or other document, a reference to relationship by blood or marriage includes adoption.

Age of Majority Act (A-6)

Entire Act is relevant, but especially the following sections:

Section 3: this Act's age of majority governs the interpretation of any deed, will or other instrument made on or after July 1, 1971.

Section 7: a will or codicil made before July 1, 1971 will not be treated as having been made on a subsequent date when later confirmed by codicil made after July 1, 1971.

Section 8: if the interpretation of a deed, will or other instrument is not affected by section 3, then neither is any legislative provision incorporated by reference in it.

Section 9: this Act doesn't invalidate any direction for accumulation made in a pre-1971 deed, will or other instrument.

Agricultural and Recreational Land Ownership Act (A-9)

Section 2: Cabinet can regulate "controlled land" for the purpose of prohibiting, annulling or restricting its direct or indirect acquisition, including acquisition by succession.

Section 3: exemption for controlled land consisting of not more than 2 parcels containing an aggregate of not more than 20 acres.

Section 4: Cabinet can also exempt persons, classes of persons, transactions, interests, uses, etc. from the operation of its regulations in whole or in part.

Alberta Corporate Tax Act (A-15)

Part 11 concerning the Alberta Royalty Credit for Individuals could be relevant to some estates. The definition of "individual" in section 106(1)(c) includes a trust or estate as defined in the federal *Income Tax Act*. The taxation year for an estate or trust arising on death is also as defined in the federal Act (s. 106(1)(f)(i)).

Alberta Evidence Act (A-18)

Section 11 is an evidentiary provision relevant to litigation by or against an estate. An interested party requires corroborative evidence of that party's own evidence concerning anything occurring before the death of the deceased person.

Section 51: probate or letters of administration with will annexed are proof of the will's validity and contents.

Section 52: proof of a foreign will that affects Alberta land.

Section 58: making a comparison of disputed writing as evidence of genuineness. .

Section 60: concerning the sale of land, certain statements contained in any instrument more than 20 years old are to be taken as true unless proved otherwise.

Section 61: documents that are 20 years old have the benefit of presumptions that used to apply to 30 year old documents.

Section 62: this Act doesn't preclude other ways of proving documents.

Section 63: written certificate as proof of death of member of armed forces.

Alberta Income Tax Act (A-26)

Entire Act is relevant to the extent that it applies to estates and trusts arising on death. The definition of "individual" in section 1(1)(n) includes a trust or estate as defined in the federal *Income Tax Act*. The taxation year for an estate or trust arising on death is also as defined in the federal Act (s. 1(1)(y)).

Alberta Personal Income Tax Act (A-30)

Entire Act is relevant in that it applies to a deceased individual in the year of his or her death. The definition of "individual" in section 1(1)(l) includes a trust or estate.

Alberta Treasury Branches Act (A-37)

Section 12(1)(b)(i) provides that Alberta Treasury Branches shall not act as an executor, administrator or trustee.

Arbitration Act (A-43)

Section 42(4) provides that the death of a party to an arbitration doesn't terminate an arbitral tribunal. However, this doesn't affect any law which extinguishes a cause of action on death (s. 42(5)).

*** B ***

Builders' Lien Act (B-7)

Section 30 provides that a lienholder's rights pass on death to the lienholder's assignee or, if none, to the lienholder's personal representative.

Business Corporations Act (B-9)

Part 6 (Security Certificates, Registers and Transfers) governs the transfer and transmission of securities. In this Part, "fiduciary" includes an executor, administrator or representative of a deceased person (s. 47(2)(f)(ii)). A "purchaser" includes anyone who takes by gift (s. 47(2)(m)) and a "transfer" includes transmission by operation of law (s. 47(2)(o)).

While this Part as a whole (ss. 47 to 80) is relevant when securities are transmitted on death of a security holder, special note should be made of sections 50 (transmission of securities on death), 60 and 77 (concerning adverse claims) and 64 and 76 (governing endorsement). There is also statutory protection for agents handling securities (s. 74) and issuers who transfer securities (s. 78).

* C *

Cancer Programs Act (C-2)

Confidential information in the cancer registry may be disclosed to the legal representative of the person who is the subject of the information: s. 36(3)(a).

Cemeteries Act (C-3)

Section 29(2) deems cremation costs to be part of the deceased's funeral expenses. Apart from this, the Act's main purpose is to regulate the cemetery industry so it is not directly relevant to the succession of property.

Child Welfare Act (C-12)

Part 6 (Adoption) directly affects succession rights.

Section 70(3): an adoption order may be made in the name of the spouse and a deceased spouse in certain circumstances.

Section 72(4): in any testamentary or other document, a reference to relationship by blood or marriage includes adoption.

Section 72(8): the legal effect of an adoption order binds the Crown for the purpose of, among other things, the rights of succession affecting adopted children.

Section 73: a foreign adoption order has the same legal effect as an Alberta order.

Section 82(5)(c): when an adoption order is set aside, all prior legal relationships are re-established as they were immediately before the adoption order was made.

Civil Enforcement Act (C-15)

In Part 7 (Land), s. 76(2) provides that, where a writ is registered against land of which the enforcement debtor is a joint tenant and the enforcement debtor dies, the writ continues to bind that interest (essentially severing the joint tenancy).

In Part 8 (Garnishment), a future obligation is attachable by garnishment (s. 78(a)), subject to court exemption (s. 80). A future obligation includes one that arises under the will of a deceased person (s. 77(1)(c)).

In Part 10 (Exemptions), s. 92 provides that exemptions apply to the property of a deceased debtor for so long as needed for family support.

Companies Act (C-21)

None of the following references occur in Part 9 (Provisions Applying to Companies with Objects other than the Acquisition of Gain), which is the part of this statute having the greatest ongoing legal application.

Section 13(1)(d): no company formed under this statute can act as an executor, administrator or trustee of an estate.

Section 74: shares are transferrable personal property.

Section 77: the personal representative of a deceased member can validly transfer shares.

Section 78: the estate is liable in respect of shares; the estate's executor, administrator or trustee is not personally liable.

Section 212: the personal representative and heirs of a deceased contributory are responsible for the contributory's liabilities.

Section 230: payment of debts owed to the company by contributory or contributory's estate.

Section 235: the conclusiveness of a court order against a contributory is conclusive proof of liability except in proceedings against the contributory's real property, where it is prima facie proof only.

Section 236: statute is no restriction on existing powers of instituting proceedings against a contributory or debtor, or against the estate of a contributory or debtor.

Section 243(1)(m): a liquidator can take out letters of administration concerning any deceased contributory and do anything necessary to obtain payment of the contributory's liability.

Schedule, Table A (model Articles of Association): articles 7 (lien on unpaid shares binds estate), 18 to 20 (concerning title to and transfer of a deceased member's shares) and 94 and 95 (notice to deceased member's heirs).

Condominium Property Act (C-22)

A condo unit named in a certificate of title devolves like any parcel of land: s. 5(2). Condo bylaws can't prohibit or restrict the devolution of condo units: s. 32(5). Nor can sanctions imposed under a bylaw have that effect: s. 35(6).

Conflicts of Interest Act (C-23)

A government Minister is not allowed to own or have a beneficial interest in publicly-traded securities unless they are in a blind trust or approved by the Ethics Commissioner: s. 20. If a Minister acquires such an interest by gift or inheritance, there are time limits for compliance with the disclosure requirements: s. 22(2).

Co-operative Associations Act (C-28)

This Act will be repealed on March 31, 2005. Until then, a couple of provisions remain relevant until the full transition is made to the new *Cooperatives Act* (C-28.1). S. 18 governs the disposal of a deceased member's shares in the association. S. 55(1)(j) and (k) provide that a liquidator can prove, rank and claim in the estate of a deceased contributory.

Cooperatives Act (C-28.1)

Section 48(4) to (6): mechanics of transmission of a member's interest on death (includes membership, membership share, member loans or designated investment shares).

Part 9 (Security Certificates, Registers and Transfers) governs the transfer and transmission of securities issued by cooperatives. In this Part, "fiduciary" includes an executor, administrator or representative of a deceased person (s. 158(1)(e)). A "purchaser" includes anyone who takes by gift (s. 158(1)(m)) and a "transfer" includes transmission by operation of law (s. 158(1)(o)).

While this Part as a whole (ss. 158 to 227) is relevant when securities are transmitted on death of a security holder, special note should be made of sections 171 and 172 (cooperatives must recognize new owners by transmission, on provision of certain evidence), 173 (recognition of surviving joint security holder), 176 (mechanics of transmission), 194, 195 and 222 (concerning adverse claims) and 202, 206, 219 and 220 (endorsement by fiduciary).

Court of Queen's Bench Act (C-31)

Section 2(1.1): the Queen's Bench now exercises the jurisdiction of the former Surrogate Court to hear and determine cases about succession and estates.

Section 20(1)(a.1): the provincial cabinet's regulatory power to make rules of court includes rules governing surrogate matters. It is pursuant to this section that the *Surrogate Rules*, Alta. Reg. 130/95, are enacted. The Rules of Court Committee appointed under s. 25 makes recommendations to the Minister about the rules of court.

Credit Union Act (C-32)

Section 110(1)(b)(i): a common share in a credit union is not transferrable unless it is due to the holder's death.

Section 111(4)(a): restrictions on a credit union's ability to redeem common shares do not apply when redemption is due to the holder's death.

Section 113: a credit union cannot accept a deposit from a non-member unless that person is the legal representative or trustee of a member.

Section 116: when the estate of a deceased member has no executor or administrator, the credit union can pay out the deceased's deposits to the estate's beneficiaries (except in the case of a joint account). The credit union has immunity for payments made in good faith and without negligence.

Section 206: governs the liability of members of a dissolved credit union. "Member" includes the heir of a deceased member.

*** D ***

Debtors' Assistance Act (D-6)

Section 1(c) provides that "debtor" includes the legal representative of a deceased debtor. Therefore a debtor's estate may use the services and assistance of the Debtors' Assistance Board to settle debts.

Dependent Adults Act (D-11)

Section 39(k): where a dependent adult is interested in land held by a deceased landowner, the trustee is authorized to give the dependent adult's consent to its sale by the personal representative of a deceased landowner.

Section 41: the doctrine of ademption does not apply to any property of the dependent adult that is sold by the trustee under court order.

Section 44: on the dependent adult's death, the trustee must account to the legal representative of the dependent adult's estate.

Sections 52(5)-(6) and 56: voluntarily or by court order, the legal representative of a deceased trustee may have to account to the alternate trustee who replaces the deceased trustee, including where the new trustee is the Public Trustee.

Section 57: a trustee is legally entitled to take possession of the dependent adult's will.

Section 65: the existence of a guardianship or trusteeship order does not establish that the dependent adult lacks testamentary capacity.

Domestic Relations Act (D-14)

Section 11: if a spouse dies intestate following an order of judicial separation, the surviving spouse is deemed to have predeceased.

Section 21: an order or judgment of alimony or spousal support can be registered in a land titles office and binds the payor's interest in the land.

Part 7 (Guardianship and Custody of Minors) as a whole is relevant whenever one or more parents die leaving minor children. Special note should be made of sections 51 (appointment of guardian in parent's will), 52 (court appointment of guardian to act jointly with surviving parent or guardian appointed by will), 53 (court appointment of guardian to replace deceased or unfit parent or guardian), 54 (guardian of estate must give security) and 57(2) (court-declared unfit parent does not receive custody if fit parent dies).

Part 9 (Establishing Parentage) is also relevant as a whole. Special note should be made of sections 78 (presumption of parentage) and 79 (court declaration of parentage) due to their effect on succession rights. Both the presumption and declaration of parentage apply "for all purposes of the law of Alberta": ss. 78(1) and 79(5).

Devolution of Real Property Act (D-12)

Entire Act is relevant exclusively to succession. It concerns the authority and obligations of executors and administrators handling real property.

Dower Act (D-15)

Section 11(3): if a living spouse breaches dower rights and then dies, an action for damages can be commenced or continued against the deceased spouse's estate but liability is limited to the estate assets which are undistributed at the date of service of the statement of claim.

Sections 1(b), 1(c)(iv) and (v), 18 to 23: regardless of the terms of the will or laws of intestacy, a surviving spouse is entitled to a life estate in the homestead. In the case of multiple homesteads, the surviving spouse must elect one. The surviving spouse is also entitled to a life estate in the exempt personal property of the deceased.

Sections 24-25: Dower rights extend to mineral rights, but not to land held in joint tenancy or tenancy in common.

Section 26: All married people have dower rights regardless of minority.

Dower forms are prescribed under section 27.

* E *

Election Act (E-1)

Section 210 provides that a person who has a monetary claim against a candidate in respect of an election must submit the claim within 2 months of polling day. If the claimant dies within that 2 month period, the claimant's legal representative must submit the claim within 1 month of obtaining probate or administration.

Electronic Transactions Act (E-5.5) [unproclaimed]

This Act establishes the validity of electronic versions of certain written information and records. Section 7(1)(a) and (b) provides that this statute does not apply to wills, codicils or trusts created in a will or codicil.

Employment Pension Plans Act (E-8)

Section 15(1)(f): disclosure of benefits information to the estate of a deceased pension plan member or former member.

Section 37(2): if a member or former member dies before pension commencement, obligation to return excess contributions.

Section 39: if a member or former member dies before pension commencement, pension benefits are payable to the surviving spouse or, if none, to the designated beneficiary or, if none, to the estate. The pension plan may augment such pre-retirement death benefits by ancillary benefits higher than the minimum statutory requirements: s. 42(1)(c)(i).

Section 40: if a member or former member dies after pension commencement, surviving spouse will receive the member's pension for life, although the amount may be adjusted by the pension plan.

Section 41: a surviving spouse will not lose the pension on remarriage after a certain date.

Section 46: specifies various manners in which benefits may be paid out, including to a surviving spouse.

Section 55: if the pension plan is wound up and there are surplus assets, the plan must provide for their allocation to members, former members, surviving spouses, designated beneficiaries and personal representatives of estates.

Section 86: a person claiming a benefit has the onus of proving entitlement.

Environmental Protection and Enhancement Act (E-12)

Sections 22-24 concern the granting and registration of conservation easements. Section 22(1)(c) and (d) provide that grantors and grantees of such easements can include successors, executors, administrators and trustees.

Part 5 regulates the release of substances. Section 107(1)(c)(v) provides that a "person responsible for a contaminated site" can include successors, executors, administrators and trustees.

Part 6 regulates conservation and reclamation. Section 134(b)(vi) provides that "operator" can include successors, executors, administrators and trustees. Section 142(2)(a)(ii) empowers the Director to issue an environmental protection order regarding conservation and reclamation to a person's successor, executor, administrator or trustee as well.

Part 7 regulates potable water. Section 147(b)(v) provides that a "person responsible for a waterworks system" can include successors, executors, administrators and trustees.

An important general provision is found in Part 11 (Miscellaneous Provisions). Section 240(3) provides that, when an environmental protection order is directed to an executor, administrator or trustee, that person's liability is limited to the value of the assets being administered, unless the situation identified in the order resulted from or was aggravated by the gross negligence or wilful misconduct of the executor, administrator or trustee.

* F *

Family Relief Act (F-5)

Entire Act is relevant exclusively to succession. It allows specified dependent relatives of a testate or intestate deceased person to apply to court for a redistribution of the estate for their maintenance and support.

Farm Implement Act (F-7)

Section 2(1)(b) provides that the Act does not apply to the sale of a farm implement by an executor or administrator.

Fatal Accidents Act (F-8)

This Act does not really concern succession as such, although the Act is relevant to the family of anyone who died as the result of a tort. The Act empowers the executor or administrator of the estate to bring an action for damages on behalf of specified family members (not on behalf of the estate).

Fatality Inquiries Act (F-9)

The Act concerns the role of the medical examiner in conducting public fatality inquiries and addresses when deaths require notification, investigation, hearing, etc. While concerned with death, the Act does not really affect succession, except to the extent that certain provisions empowering the medical examiner displace the legal authority that would otherwise be vested in the executor or administrator:

Section 22(1) and (5) empowers the medical examiner to take possession of the body and to release it for burial or other disposition when no longer required. The medical examiner may dispose of the body's soiled or damaged clothing if not needed for the investigation: s. 23. The medical examiner may also allow removal of tissue under the *Human Tissue Gift Act* if not needed for the investigation: s. 26.

Section 30(2) provides that the adult next of kin or personal representative of the deceased can request and receive a report from the Chief Medical Examiner, once the investigation and public inquiry are over.

Section 49(2)(b): the deceased's personal representative has the right to appear at the public inquiry, cross-examine witnesses and present arguments and submissions.

Financial Administration Act (F-12)

Section 20: the personal representative of a deceased revenue officer must forthwith pay any public money held by the revenue officer to the Provincial Treasurer or appropriate provincial agency.

Section 89(1): where any deceased person has received public money which must be accounted for and turned over to the government, the Provincial Treasurer can issue a notice to account for public money to that person's personal representative.

Franchises Act (F-23)

Section 5(1)(f) provides that, when the executor or administrator of a deceased franchisee sells the franchise, there is an exemption from the statutory requirement to provide a disclosure document.

Freedom of Information Act (F-25)

Section 84(1)(a) provides that any right or power conferred on an individual by FOIPP can be exercised by that individual's personal representative if it relates to the administration of the estate.

[Other provisions in this Act concerning confidentiality of deceased's information are not as directly related to succession and so are noted in Appendix B.]

Funeral Services Act (F-29)

While this Act regulates the sale of funeral services generally, there is one provision that could directly affect the succession of property:

Money paid on account of a pre-need funeral services contract is held in trust in a special fund. Section 8(6) provides that this money is not liable to demand, seizure or detention under any legal process.

*** G ***

*** H ***

Health Information Act (H-5)

Section 104(1)(d) provides that any right or power conferred on an individual by the Act can be exercised by that individual's personal representative if it relates to the administration of the estate and the deceased was an adult.

[Other provisions in this Act concerning confidentiality of deceased's information are not as directly related to succession and so are noted in Appendix B.]

Historical Resources Act (H-9)

Section 20(12) provides that if a person inherits anything designated as a Provincial Historical Resource, the person must notify the Minister within 15 days of its transfer.

Hospitals Act (H-12)

Section 30 provides that liability for uninsured hospital charges binds the person, person's spouse (with some exceptions), minor's parents, anyone who accepts responsibility in writing and everyone's executors and administrators.

Human Tissue Gift Act (H-15)

Section 1(g) defines "writing" as including wills and other testamentary instruments.

Section 4: an adult can consent, by will, in writing or orally, to use after death of the person's body or body parts.

Section 5: in the absence of such consent and if death is imminent, next of kin can consent, including for minors.

Section 6: if consent has been given, death is imminent and a fatality inquiry is likely, the medical examiner can direct the removal of tissue after death.

Section 7: how death is determined for the purpose of transplant and exclusion of doctors who might be in a conflict position.

Section 8: if gifted tissue cannot be used, the tissue and body shall be disposed of as if no consent had been given.

* I *

Income Support Recovery Act (I-1)

Section 24 provides that an order or agreement to repay a social allowance overpayment binds the estate as a recoverable debt.

Insurance Act (I-3)

Any use in the Act of "person" includes a personal representative (executor, administrator, trustee, etc.): s. 1(ss) & (tt).

Section 36(1)(d) prohibits a licensed insurer from acting as an executor, administrator or trustee.

Corporate governance provisions concerning provincial companies:

Section 205: the limitations on liability available to the shareholders and incorporators of a dissolved provincial company extend to the heirs and personal representatives of the shareholders and incorporators.

Section 243(2): although a provincial company must not hold shares in itself or in the holding body corporate of the company, there is an exception when the provincial company is acting as a personal representative to hold non-beneficially owned shares.

Section 254: a provincial company's bylaws may create a lien on shares held by a shareholder or his personal representative for an outstanding debt.

Section 365(4): a provincial company can indemnify its directors and officers, including their heirs and personal representatives.

Provisions concerning Fire Insurance:

Statutory Condition 3 is deemed to be part of every fire insurance contract by virtue of s. 549. It provides that an insurer is liable for loss or damage after change of title by succession, operation of law or death.

Provisions concerning Life Insurance:

An insured can designate in a contract or declaration (including but not limited to a will) that the life insurance proceeds are payable to a specified beneficiary or to the insured's personal representative. While many, if not most, provisions in Part 5, Subpart 4 (Life Insurance) (ss. 554-607) would be potentially relevant to the creation, operation or enforcement of the legal entitlements flowing from such designations, the following provisions are especially notable:

Section 554(e) defines "declaration" as a written and signed instrument in which a designation is made, altered or revoked. "Instrument" includes a will: s. 554(i).

Section 574: insured can designate in a contract or declaration that the life insurance proceeds are payable to a specified beneficiary or the insured's personal representative. The designation can be altered or revoked by declaration as well.

Section 575: insured can make an irrevocable declaration but not by will.

Section 576: rules for making a designation in a will.

Section 577: insured can appoint a trustee for a designated beneficiary in the contract or declaration.

Section 578: if a designated beneficiary predeceases and there is no gift over, rules for where the insurance proceeds go.

Section 579: enforcement of payment of insurance proceeds by designated beneficiary or trustee.

Section 580(1): when an insured has designated a beneficiary, the insurance proceeds do not form part of the estate and are not attachable by creditors of the insured.

Section 580(2): if the designated beneficiary is a close relative, the insured's interest is exempt from attachment.

Section 583: the insured can designate a third party to have the insured's rights and interests in the policy on his death, in which case the policy does not form part of the estate and the third party is deemed to be the insured.

Section 599: in the case of simultaneous death, the designated beneficiary is deemed to have predeceased the insured.

Section 600(3): where a designated beneficiary who receives insurance money in installments has no right to commute, the beneficiary's personal representative can commute with the insurer's consent on the death of the beneficiary.

Provisions concerning Automobile Insurance:

While many, if not most, provisions in Part 5, Subpart 5 (Automobile Insurance) (ss. 608-651) would be potentially relevant to insurance claims concerning automobile accidents that resulted in death, the following provisions are especially notable:

Statutory Condition 1 is deemed to be part of every automobile insurance contract by virtue of s. 614. It provides that the insured must promptly give written notice to the insurer of any change in the risk material to the contract and within his knowledge. Such change does not include where the insured's insurable interest in the automobile is altered due to change of title by succession or death.

Section 616(3): on the death of a named insured in a motor vehicle liability policy, certain others are deemed to be insured under the policy (surviving cohabiting spouse, personal representative of the deceased insured and whoever has temporary custody of the motor vehicle until probate).

Section 629(3): accident insurance benefits under a motor vehicle liability policy include death benefits and funeral expenses for the death of the insured.

Section 636: payment made by an insurer under a motor vehicle liability policy constitutes a release of all other claims against the insurer by the recipient or recipient's personal representative, including claims under the *Fatal Accidents Act*. The recipient can still bring action but the judgment will be reduced by the amount of the insurance.

Section 640: who is covered by the injury and death benefits of a motor vehicle liability policy where the accident is caused by an uninsured motorist.

Section 641: who is covered by the medical, dental, ambulance, funeral benefits, etc. of a motor vehicle liability policy and when they are payable as "first loss" or "excess" benefits. Payment of benefits constitutes a release of all similar claims against the insurer by the recipient or recipient's personal representative, including claims under the *Fatal Accidents Act*.

Section 642: similar provision concerning accident insurance benefits.

Provisions concerning Accident and Sickness Insurance:

An insured can designate in a contract or declaration (including but not limited to a will) that, on death by accident, the accident insurance proceeds are payable to a specified beneficiary or to the insured's personal representative. While many, if not most, provisions in Part 5, Subpart 6 (Accident and Sickness Insurance) (ss. 662-701) would be potentially relevant to the creation, operation or enforcement of the legal entitlements flowing from such designations, the following provisions are especially notable:

Section 662(f) defines "declaration" as a written and signed instrument in which a designation is made, altered or revoked. "Instrument" includes a will: s. 662(j).

Section 684: insured can designate in a contract or declaration that, on death by accident, the accident insurance proceeds are payable to a specified beneficiary or the insured's personal representative. The designation can be altered or revoked by declaration as well.

Section 685: if a designated beneficiary predeceases and there is no gift over, rules for where the insurance proceeds go.

Section 686: insured can appoint a trustee for a designated beneficiary in the contract or declaration.

Section 688(1): when an insured has designated a beneficiary, the insurance proceeds do not form part of the estate and are not attachable by creditors of the insured.

Section 688(2): if the designated beneficiary is a close relative, the insured's interest is exempt from attachment.

Section 690: in the case of simultaneous death, the designated beneficiary is deemed to have predeceased the insured.

Section 694(b): an insurer may pay certain estate debts (like for burial) up to a stated amount.

Section 695(5): payment of insurance money to a non-resident deceased's personal representative discharges the insurer.

Provisions concerning Hail Insurance:

Statutory Condition 17 is deemed to be part of every fire insurance contract by virtue of s. 728. It provides that any assignment of the insured crops does not bind the insurer, but this does not include any change of title by succession, operation of law or death.

Interpretation Act (I-8)

Whenever the word "person" is used in an Alberta enactment, it includes the person's heirs, executors, administrators and other legal representatives: s. 28(1)(nn).

Intestate Succession Act (I-10)

Entire Act is relevant exclusively to succession. The Act determines which specified relatives are entitled to receive a share in the estate of someone who dies without a will.

*** J ***

Judicature Act (J-2)

Part 1 (Jurisdiction of the Court) (ss. 2-9) is the foundation for curial jurisdiction over matters of succession.

Section 16: courts can grant equitable relief.

Section 58: establishes when a person reaches a particular age for the purpose of interpreting enactments, deed, wills or other instruments.

Section 60: abolishes the defence of common employment previously used by employers to avoid liability for an employee's injury or death.

* K *

* L *

Land Titles Act (L-4)

Section 28(4): the Registrar shall refuse to register any document (including transmission) that the Registrar suspects breaks the regulations under the *Agricultural and Recreational Land Ownership Act.*

Section 47: a certificate of title shall not contain notice of any trust and all trustees are deemed to be the absolute and beneficial owners of land for the purposes of this Act.

Section 108: where an annuity is registered against title, steps needed to discharge the registration when the annuitant dies or it otherwise ceases to be payable.

Sections 116 to 121: procedures for transmission of title on death, including transmission into the name of the personal representative and transmission between joint tenants.

Section 182: recovery from a person or the person's estate of money paid out of the General Revenue Fund on account of that person.

Section 199: where a beneficiary is interested in land, the land owner must allow his name to be used in any relevant action brought by the beneficiary, but is entitled to be indemnified in respect of it.

Section 209: death does not affect any proceedings being carried on under the Act.

Law of Property Act (L-7)

Part 1 (Transfer and Descent of Land) (ss. 2-9) is relevant in its entirety, although some provisions are not exclusively relevant to succession. It contains the following provisions:

Section 2: Devised land must pass through the personal representative's name.

Sections 3-4: On the death of a spouse, the surviving spouse has no dower or curtesy rights at common law, just statutory dower rights provided in the *Dower Act.*

Section 5: Any will that creates a tenancy by entireties creates instead a joint tenancy.

Section 6: Married spouses can transfer land between themselves without the intervention of a trustee.

Section 7: Every land transfer is absolute unless a contrary intention is expressed in the transfer document.

Section 8: A will or other transfer in favour of 2 or more people must express the intention to create a joint tenancy; otherwise it creates a tenancy in common.

Section 9: No estate tails can be created, including by will.

Legitimacy Act (L-10)

This Act legitimizes children in certain circumstances who would otherwise be illegitimate. This would affect the children's succession rights.

Limitations Act (L-12)

While the Act as a whole is relevant to all litigation, including litigation involving an estate, the following sections are especially notable:

Section 3(2)(c): specifies the time from which the 2 year limitation period runs against the personal representative of an estate.

Section 6: rules for adding claims, substituting parties, or changing the capacity in which a party sues.

Section 9(5)(b): a maker's agreement, acknowledgment or part payment binds anyone who is the successor of the maker or who acquires an interest in property from the maker.

Loan and Trust Corporations Act (L-20)

Provisions concerning trust corporations as personal representatives:

Section 183(1)(a): no corporation other than a registered trust corporation can act as an executor, administrator or trustee.

Section 185: when a registered trust corporation is appointed as an executor, administrator or trustee, its liability is the same as an individual's liability in that role. A registered trust corporation can be appointed as a sole trustee or as a joint

trustee and is not required to provide security. A registered trust corporation can be appointed under a will, deed, statute or document creating a trust.

When a registered trust corporation acts as an executor, administrator or trustee, it is governed by all the provisions concerning a fiduciary role. Without being exhaustive, the most noteworthy of these provisions are:

Section 41(1)(e): obligation to maintain records of fiduciary activities.

Section 126: fiduciary powers can be delegated to officers within the trust corporation.

Section 132: the corporation's duty of care includes due regard for the interests of persons for whom it acts in a fiduciary capacity.

Section 173: restricted transactions and investments of funds held as fiduciary.

Section 195(2): much of Part 11 (Investments) does not apply to funds held as a fiduciary, other than deposits.

Section 211: money held as a fiduciary may be invested in common trust funds.

Section 223: continuation of fiduciary obligations when one trust corporation is sold to another.

Provisions concerning handling of deposits on death:

Section 324(1): a depositor can name in writing a recipient to receive the deposit on the depositor's death, but not in excess of an amount set by regulation.

Section 324(2): on proof of death, the registered corporation can pay over the deposit as directed under subsection (1).

Section 324(3): even if no nomination was made under subsection (1), the registered corporation can pay out (before probate or letters of administration are granted) a prescribed amount to any beneficiary who appears to be legally entitled to it.

Section 325: legal protection for the registered corporation if it pays a deposit to the wrong person after the death of the depositor.

* M *

Maintenance Enforcement Act (M-1)

[Although in the absence of express agreement or court order, the legal obligation to pay monthly maintenance ceases on the death of the payor, arrears of maintenance are a debt of the estate. The following provisions could be relevant in some circumstances.]

Section 20: maintenance orders, whether filed or not, have priority over any unsecured judgment debt other than another maintenance order.

Section 21: a maintenance order can be filed in the PPR and is deemed to be a writ of enforcement for the amount of arrears. It has priority over any other writ.

Section 23: a maintenance order can be registered in the land titles office and it binds all the payor's interest in land and operates as a charge on the land.

Marriage Act (M-5)

Section 21: a married person can apply for a court decree of presumption of death concerning the other spouse. Seven years continual absence is prima facie proof. A decree would trigger succession rights, but also has a broader application (e.g. right to remarry).

Matrimonial Property Act (M-8)

Section 7(2)(b) and (e): excluded property includes inheritance and insurance proceeds not in respect of property.

Section 11: a surviving spouse can make a matrimonial property claim if s/he could have made one immediately before the death. The surviving spouse can also continue a claim commenced before the death. The court will offset against the matrimonial property order any benefits received by the surviving spouse as a result of the death. Surviving spouse can bring claim until 6 months after grant of probate or administration.

Section 12: court can suspend administration of estate pending the matrimonial property claim.

Section 13: a personal representative shall not distribute an estate until 6 months after grant of probate or administration (i.e. so as not to defeat surviving spouse's limitation period) except with surviving spouse's consent or by order of court. Breach makes the personal representative personally liable.

Section 14: if the surviving spouse makes a matrimonial property claim, the personal representative must hold the estate and not distribute it except in accordance with the matrimonial property order. Breach makes the personal representative personally liable.

Section 15: property that is transferred to the surviving spouse under a matrimonial property order is deemed never to have been part of the deceased spouse's estate for the purposes of the will, *Intestate Succession Act* or *Family Relief Act*.

Section 16: if a spouse dies after applying for a matrimonial property division, the spouse's rights and action continue in the estate.

Section 17: court can adjourn an application under this Act pending determination of other property matters between the spouses.

Section 18: a surviving spouse who applies for a matrimonial property division still has the right to also apply under the *Family Relief Act* and the 2 actions can be joined.

Section 36: the presumption of advancement does not apply between the spouses, although joint ownership will be recognized where appropriate.

Sections 37 and 38: spouses can relinquish their rights under this Act by written agreement. Each spouse must provide written acknowledgment of information, understanding and voluntariness.

Members of the Legislative Assembly Pension Plan Act (M-12)

Schedule 1 (Registered Pension Plan):

Section 15(7): estates, spouses and beneficiaries are exempt from certain computation features concerning pensionable service.

Section 18(5): a surviving spouse gets 2/3 pension on death of former member who was receiving pension.

Section 19(1)(b): pensioner can also opt to receive a joint pension with a nominee designated by the pensioner, payable for the life of the survivor. There is protection against making such a designation if the pensioner has a spouse: s. 23.

Section 26: specifies where contributions go if a contributor dies before receiving pension.

Section 27: in certain circumstances, a surviving spouse who is entitled to receive the contributions under s. 26 can get the pension instead.

Section 31: rules concerning designation of beneficiary to receive benefits on pensioner's death. If no designation, benefits go to surviving spouse or, if none, to estate.

Schedule 2 (Supplementary Pension Plan):

Section 17(7): estates, spouses and beneficiaries are exempt from having to repay certain types of overpayments.

Section 17(9): a surviving spouse gets 3/4 pension on death of former member who was receiving pension.

Section 25: s. 26 of Schedule 1 applies to specify where contributions go if a contributor dies before receiving pension.

Section 26: additional payments for surviving spouse or dependent minor.

Section 29: s. 31 of Schedule 1 applies concerning the designation of beneficiaries.

Section 43(3): no need to repay part of pension or benefits received by the deceased.

Metis Settlements Act (M-14)

Section 222(1): the General Council, after consultation with the Minister, can make General Council Policies:

(u) respecting the devolution of estates and interests in patented land held by a settlement member, whether the member dies testate or intestate.

(v) providing that one or more of the following Acts do not apply to specified interests in patented land held by settlement members: *Administration of Estates Act, Devolution of Real Property Act, Dower Act, Intestate Succession Act, Ultimate Heir Act* and *Wills Act.*

Mines and Minerals Act (M-17)

Section 13(4) provides that a Ministerial notification evidencing someone's mineral title can issue in the name of a deceased person and, on registration, forms part of the estate.

Minors' Property Act (M-18)

Entire Act is relevant when a minor inherits property, although the Act is not exclusively relevant to succession.

Mobile Home Sites Tenancies Act (M-20)

This Act binds the estate of both landlords and tenants. "Landlord" includes a landlord's successors in title: s. 2. "Tenant" includes a tenant's personal representative and heirs: s. 3.

Motor Vehicle Accident Claims Act (M-22)

Entire Act is relevant when death occurs from a motor vehicle accident where the defendant is either unknown or judgment proof. A claim can be made for the unsatisfied judgment to be assigned to the government and paid from the General Revenue Fund. The Administrator will also serve as a nominal defendant where the actual defendant is unknown.

Motor Vehicle Administration Act (M-23)

Section 41(7) provides that certain persons may operate a deceased's vehicle for the balance of the year under the deceased's registration: cohabiting spouse, anyone with temporary custody of the vehicle until grant of probate or administration, personal representative.

Section 66(b): the Minister can release an owner's or driver's financial responsibility information to the personal representative of a deceased accident victim.

Municipal Government Act (M-26)

Section 531(3) provides that failure to give notice to a municipality within 21 days of injury due to its gross negligence in snow, slush or ice removal is not a bar to the action if death results.

*** N ***

*** O ***

*** P ***

Parentage and Maintenance Act (P-1)

Section 7(5) provides that an application for a court order of parentage and maintenance cannot be brought in respect of a respondent who is deceased.

[A declaration of parentage under s. 15(1) of this Act is made only "for the purposes of this Act" – i.e. maintenance and support – and quite arguably does not determine (in and of itself) succession rights. By contrast, a declaration of parentage made under s. 79 of the *Domestic Relations Act* "applies for all purposes of the law of Alberta".]

Partnership Act (P-3)

Section 4(c)(iii): someone is not a partner just because they are the surviving spouse or child of a deceased partner who receives an annuity of part of the profits.

Section 5(1)(c): the outstanding claim of a lender or seller of goodwill against an insolvent deceased borrower or purchaser is postponed and ranks behind the claims of other creditors.

Section 11(3) and (4): a deceased partner's estate is severally liable for firm debts incurred while that partner was alive, but the deceased partner's separate debts have priority of payment.

Section 17(3): continuing to use the same firm name after a partner's death does not make the estate liable for firm debts contracted after death.

Section 23(1) and (2): partnership property must be held and applied exclusively for the purposes of the partnership, although land devolves in trust so far as necessary for the persons beneficially interested in it.

Section 25: partnership land is treated like personal property as between the partners, including representatives of a deceased partner.

Section 32: each partner is bound to account to any partner or the partner's legal representative.

Section 33: partners are accountable to the firm for profits, including any made after the death of a partner and before the firm is wound up.

Section 37(1)(a): subject to contrary agreement, death of a partner dissolves the partnership.

Section 40(3)(a): estate of a deceased partner is not liable for partnership debts incurred after the date of death.

Section 46: pending a final settlement of accounts between a deceased partner and the firm, how profits after death are to be distributed. But if the

surviving partners exercise an option to buy the deceased partner's option, the estate is not entitled to any further or other share of profits.

Section 47: the amount due from the surviving partners to the deceased partner's representative is a debt accruing at the date of death.

Section 52(3)(l): a certificate of limited partnership must state whether surviving general partners have the right to continue the business on the death of a general partner.

Section 56(g): a general partner has no right to continue the business on the death of another general partner unless the certificate says so.

Section 66(2): a substituted limited partner on the death of a limited partner has all the same rights.

Section 67: death of a general partner dissolves a limited partnership, unless the certificate provides otherwise or all partners agree otherwise.

Section 68: the personal representative of a deceased limited partner has all the same rights and obligations. The estate is liable for all the deceased limited partner's liabilities.

Section 70(1)(e): the certificate must be amended if a general partner dies but the partners agree to carry on the business under s. 67.

Section 80(4): The registration of an Alberta LLP (limited liability partnership) is not affected by a change in the partnership's partners. Same for an extra-provincial LLP: s. 95(4).

Perpetuities Act (P-5)

Entire Act is relevant to testamentary dispositions. But Act also applies to non-testamentary situations.

Personal Directives Act (P-6)

Section 29: if an agent under a personal directive acts in good faith, a personal decision made by the agent will not disentitle the agent, agent's spouse or anyone claiming through either of them, to a disposition under a will, life insurance proceeds, a share under the *Intestate Succession Act* or a share under the *Family Relief Act*.

Pharmaceutical Profession Act (P-12)

Section 25: death terminates a licensee's pharmacy licence or certificate but, notwithstanding the termination, the pharmacy can continue to operate for a period prescribed by regulation if it is immediately placed under the management, control and supervision of another pharmacist.

Powers of Attorney Act (P-20)

Section 10: the personal representative of a donor can apply to court for an accounting by the attorney.

Public Heath Act (P-37)

Section 53(4)(b): the Chief Medical Officer or a regional hospital authority can release confidential information about a person's communicable disease to the person to whom it relates or to that person's legal representative. "Legal representative" includes the executor or administrator of a deceased person: s. 1(aa). The person or legal representative can seek a court order for the release of that information: s. 54. The Minister can also release such information "to any person" if it is in the public interest: s. 53(5)(b).

Public Lands Act (P-40)

Section 32: a notification in the name of a deceased person is not void but title vests in the personal representative.

Section 92: there is relief from cancellation of a homestead sale if the default occurs during the final illness or after death of the purchaser. If time limits are changed, the Minister shall give notice to the personal representative or next of kin.

Section 93: special rules govern the Minister's consent to assignment of homestead sale where the assignment is made by the personal representative.

Section 97(2): a deceased homestead purchaser's personal representative does not have to prove the deceased was Canadian or British.

Section 111: rules governing the assignment of a grazing lease held by a deceased lessee. Minister can force assignment after a certain time or, failing that, can cancel the lease.

Public Sector Pension Plans Act (P-41)

This Act governs 6 different pension plans. The actual details of each subsisting plan, including provisions concerning death, beneficiaries, surviving

spouses, etc., are not contained in the Act but in cabinet regulations authorized by the Act. Therefore, the only statutory provisions noted here are the regulatory authority sections. The relevant regulation is also noted. One plan is now closed and has a provision continuing the repealed former legislation as needed for the purpose of administering the plan for remaining members.

Schedule 1, Local Authorities Pension Plan Provisions, s. 4(1). *Local Authorities Pension Plan* (Alta. Reg. 366/93).

Schedule 2, Public Service Pension Plan Provisions, ss. 4(1) and 12. *Public Service Pension Plan* (Alta. Reg. 368/93) and *Public Sector Pension Plans (Legislative Provisions) Regulation* (Alta. Reg. 365/93).

Schedule 3, Universities Academic Pension Plan Provisions, s. 4(1). *Universities Academic Pension Plan* (Alta. Reg. 370/93).

Schedule 4, Special Forces Pension Plan Provisions, s. 4(1). *Special Forces Pension Plan* (Alta. Reg. 369/93).

Schedule 5, Management Employees Pension Plan Provisions, s. 4(1). *Management Employees Pension Plan* (Alta. Reg. 367/93).

Schedule 6, Public Service Management (Closed Membership) Pension Plan Provisions, s. 3.1 – continues the benefits, rights and liabilities under the old plan as it was immediately before its legislation was repealed. The old legislation was the *Public Service Management Pension Plan Act*, S.A. 1984, c. P-34.1.

Public Trustee Act (P-44)

Section 4: The Public Trustee may act in any of the following roles:

(b) the administration of estates,
(c) as the custodian of property of a deceased person,
(d) on court order, act as the judicial trustee of the estate of a deceased person,
(e) as a trustee, when appointed in the instrument creating the trust or by consent of the majority of beneficiaries,
(h) as guardian of a minor who is a beneficiary under a will or intestacy,
(j) as guardian of an unborn minor who is a beneficiary under a will or intestacy.

Section 6: if a minor has no guardian and is a beneficiary under a will or intestacy, the entitlement must be paid to the Public Trustee.

Section 7: specifies how the Public Trustee must handle a minor's inheritance.

Section 8(5): if the Public Trustee is holding property for a missing person who is found to be deceased, the Public Trustee may transfer the property to the personal representative of the estate. It can also be ordered by the court: s. 9(5)(b).

Section 15: if the Public Trustee administers the estate of a mentally incompetent person who subsequently dies, the Public Trustee retains possession pending the grant of probate or administration. The government can appoint the Public Trustee as administrator. The Public Trustee can also apply to court to be appointed administrator and has priority of appointment over the next of kin and beneficiaries. For small estates (amount set by regulation), the Public Trustee can administer the estate without an order or appointment. The Public Trustee is not obliged to surrender an unclaimed body to a university under the *Universities Act*.

Section 16: if the Public Trustee administers the estate of a mentally incompetent person who inherits property from another's estate that does not have a personal representative or who is the executor or administrator of another's estate, the Public Trustee can apply to court for administration of the other's estate and has priority of appointment over the next of kin and beneficiaries.

Section 20: the Public Trustee may apply to court to administer any deceased person's estate if there is no one else in Alberta to do so.

Section 21: the Public Trustee can summarily administer estates under $1,000 without a court order.

Section 22: when administering any estate, the Public Trustee is not obliged to surrender an unclaimed body to a university under the *Universities Act*.

Section 23: for intestate estates under a certain monetary value (amount prescribed by regulation), the Public Trustee can elect in writing to administer it, without having to obtain a court order of administration.

Section 24: for intestate estates over $3,000 where there is no one else to administer the estate, the Public Trustee may apply for an order of administration. But the Public Trustee does not have priority of appointment in these circumstances.

Section 31: the Public Trustee can apply to court to compel passing of accounts from an executor or administrator of an estate in which the Public Trustee is interested.

Section 32: the Public Trustee is not obliged to give security when acting as an administrator, trustee or other officer.

Section 33: the Public Trustee must pay to the Provincial Treasurer any unclaimed property or money that the Public Trustee still holds 2 years after distributing the estate of a mental incompetent or of a missing beneficiary of a deceased person's estate.

Section 34: the Public Trustee may delegate duties to an officer.

Section 36: the Public Trustee may charge for its services.

* Q *

* R *

Real Estate Act (R-5)

Section 2(1)(a) provides that, except for trading in real estate outside Alberta, this Act does not apply to an administrator of an estate or an executor or trustee selling real estate under a will.

Religious Societies' Land Act (R-15)

Section 15(1) provides that an incorporated congregation may acquire real and personal property by devise or bequest if it is made at least 6 months before the testator's death.

Residential Tenancies Act (R-17)

This Act binds the estate of both landlords and tenants. "Landlord" includes a landlord's heirs, personal representatives and successors in title: s. 1(1)(e). "Tenant" includes a tenant's heirs: s. 1(1)(s).

* S *

Securities Act (S-4)

Section 5(c): a person is deemed to beneficially own securities owned through a trustee, legal representative, agent or other intermediary.

Section 86(1)(a)(i): registration is not required for a trade in securities by an executor or administrator.

Special Payments Act (S-17)

This Act provides lump sum compensation to surviving spouses who previously lost their workers compensation pensions due to remarriage.

Survival of Actions Act (S-27)

Entire Act is relevant exclusively to succession. It provides that causes of action survive death both for the benefit of an estate and also against a deceased person's estate. The Act specifies and limits the types of damages recoverable by an estate.

Survivorship Act (S-28)

Entire Act is relevant exclusively to succession. It deems the order of death where two or more persons die simultaneously.

*** T ***

Teachers' Pension Plans Act (T-1)

This Act governs 2 different pension plans. The actual details of each plan, including provisions concerning death, beneficiaries, surviving spouses, etc., are not contained in the Act but in cabinet regulations authorized by the Act in sections 14(1) and 23: *Teachers' and Private School Teachers' Pension Plans* (Alta. Reg. 203/95) and *Teachers' Pension Plans (Legislative Provisions) Regulation* (Alta. Reg. 204/95).

Tort-feasors Act (T-5)

Entire Act is relevant to tort litigation by an estate or surviving family. Of course, this Act also governs tort actions where no death has occurred.

Traffic Safety Act (T-6)

Section 8(3)(b): the Registrar can release someone's confidential financial responsibility information to a deceased auto accident victim's personal representative. This section is currently unproclaimed but will come into force on May 20, 2003.

Trustee Act (T-8)

Entire Act is relevant to trustees acting under a will and how they are to carry out their duties. Of course, this Act also governs trustees acting under other types of trusts.

Section 47 allows a participant in any kind of private or statutory pension plan, RRSP, annuity fund, etc. to designate a beneficiary by instrument or by will. This section regulates the relationship between a will and a designation by instrument. It does not apply to designation of beneficiaries under the *Insurance Act*.

* U *

Ultimate Heir Act (U-1)

Entire Act is relevant exclusively to succession. If an intestate person has absolutely no heirs, the estate will escheat to the Crown.

Universities Act (U-3)

Section 39: where the terms of a university pension plan allow designation of beneficiaries, this section preserves the employer's right to set up any defence against paying out that the employer would have had against the employee or the employee's estate.

Section 67: unclaimed bodies held by an undertaker or public officer shall be turned over on demand to the nearest university, although friends or relatives can have the body if they agree to pay for burial.

Section 68: unclaimed deceased inmates of hospitals, penal or correctional institutions or public institutions shall be turned over on demand to the nearest university.

Sections 69 to 71 govern a university's use of and interment of such bodies.

* V *

Victims of Crime Act (V-3)

Entire Act is relevant to the extent that financial benefits can be awarded for death caused by the commission of certain crimes. The benefits are for dependants or, if none, specified non-dependent family members.

* W *

Water Act (W-3)

Section 80: the Director must be notified of any disposition of land to which an approval, preliminary certificate, licence or registration under this Act is appurtenant, because those things run with the land. "Disposition" includes a devise by will: s. 1(1)(l).

Widows' Pension Act (W-7)

Entire Act is relevant to the extent that it provides benefits for low-income people between 55 and 65 years of age whose spouses are deceased.

Wills Act (W-12)

Entire Act is relevant exclusively to succession. It governs the execution and interpretation of wills, conflict of laws concerning wills and addresses international wills.

Workers' Compensation Act (W-15)

Much of this Act is relevant to the extent that the Act provides pension benefits to dependent surviving spouses and children of deceased workers. The following provisions are especially notable:

Sections 21 and 23: removal of cause of action of worker, worker's estate and dependants in exchange for benefits under the Act.

Section 22: Board's subrogation rights.

Section 31: if the worker or dependants have a cause of action in a foreign jurisdiction, the Board can make them sue and assign the judgment to the Board and can withhold compensation in the meantime.

Section 51: if a surviving dependant is entitled to receive pensions due to the death of 2 people, only one pension can be received.

Section 53: Board has discretion whether to pay benefits to dependants living outside Alberta.

Sections 70-75: governs payment of pensions to surviving spouses and dependent children.

Section 76: compensation for other dependent relatives, if there is no spouse or children.

Section 77: Board shall also pay funeral and burial expenses.

Section 80(2)(a): no action for repayment of medical aid lies against a deceased worker's estate.

Section 147(3): despite confidentiality, a worker's estate can see the Board's files concerning a matter under review or appeal.

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* Y *

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APPENDIX B

ALBERTA STATUTORY PROVISIONS RELEVANT TO DEATH BUT NOT DIRECTLY RELEVANT TO SUCCESSION

CERTAIN PROVISIONS CONCERNING CONFIDENTIALITY

If a provision allowing release of confidential information to an executor or administrator might directly affect the administration of the estate, including estate litigation, it has been included in Appendix A.

Some other provisions concerning confidentiality of deceased's information, which are not as directly related to succession, are noted in this list and include the following:

Alcohol and Drug Abuse Act (A-38)

The Alberta Drug and Alcohol Abuse Commission must keep confidential all information about clients. One exception to this is when disclosure about a deceased client is made to a medical examiner under the *Fatality Inquiries Act*: s. 9(3)(e). This information can be received in evidence at a public inquiry but only if the proceedings related to it are closed to the public: s. 9(4).

Alberta Health Care Insurance Act (A-20)

Information about health services is confidential. However, the government can disclose such information to the person who provides those health services or to that person's "solicitor or personal representative, the committee of the person's estate, the person's trustee in bankruptcy or other legal representative": s. 22(7)(d). The Act does not define "personal representative" or "legal representative".

Child Welfare Act (C-12)

Certain rights to confidential information are given to the adult descendants of a deceased adopted person: ss. 58(1)(b), 75(1)(b)(iv), 78(3)(a)(iv), 80(1)(e). Certain rights to confidential information are given to an adoptee where the biological parent is deceased: ss. 75(1)(c)(iii)(A), 75(1)(c)(iv)(A), 76(b).

Freedom of Information Act (F-25)

A public body may disclose personal information in order to contact someone close to an injured, ill or deceased individual: s. 40(1)(s). A public body may also disclose personal information to a relative of a deceased person if it is not an unreasonable invasion of the deceased's privacy: s. 40(1)(cc). A denial under (cc) can be appealed to the Commissioner: s. 65(4).

Health Information Act (H-5)

A custodian of health information can release identifying diagnostic, treatment and care information without consent in order to contact someone close to an injured, ill or deceased individual, but subject to that individual's express request not to release it: s. 35(1)(d). A custodian can also release such information to the descendant of a deceased individual, specified agents of a descendant or a health provider of a descendant, if disclosure is necessary to provide health services to the descendant and if disclosure is restricted sufficiently to protect the deceased's privacy: s. 35(1)(o).

Hospitals Act (H-12)

Where a professional body is disciplining a member, hospital health records about a patient can be released on request of the professional body and with the consent of the patient's legal representative, including an executor or administrator of a deceased patient's estate: s. 24(9)-(12) and (18)(a.1).

Mental Health Act (M-13)

Where a professional body is disciplining a member, mental health records about a patient can be released on request of the professional body and with the consent of the patient's legal representative, including an executor or administrator of a deceased patient's estate: s. 17(7)(m), (n) and (q).

PROVISIONS REGULATING DEATH-RELATED INDUSTRIES

Burial of the Dead Act (B-8)

This Act makes provision for burial during times of labour disputes in the cemetery industry.

Cemeteries Act (C-3)

This Act regulates the cemetery industry through licensing and a regulatory board. The Act controls the creation and operation of cemeteries and crematories. It also governs perpetual care funds and pre-need sales of cemetery supplies and services.

Cemetery Companies Act (C-4)

This Act governs the establishment and operation of cemetery companies.

Funeral Services Act (F-29)

This Act regulates the sale of funeral services contracts, including pre-need contracts.

PROVISIONS AUTHORIZING PENSIONS

These provisions are simple "empowerment" provisions that authorize a corporate body or other form of employer to provide pensions to employees, without any further details. Presumably such pension plans include survivor benefits on the death of the pensioner and other related matters, but such details are not found in the statute.

Agriculture Financial Services Act (A-12), s. 7(d)

Alberta Municipal Financing Corporation Act (A-27), s. 22(j)

Colleges Act (C-19), s. 41(b)

Companies Act (C-21), s. 20(1)(s)

Co-operative Associations Act (C-28), s. 12(m)

Court of Queen's Bench Act (C-31), s. 16(1)(c)(v), (d) and (e) [cabinet may pass regulations re pensions for masters]

Credit Union Act (C-32), s. 51(1)(c)

Insurance Act (I-3), s. 440(c)

Loan and Trust Corporations Act (L-20), s. 167(c)

Provincial Court Act (P-31), s. 9.52(1)(d)(v), (f) and (g) [cabinet may pass regulations re pensions for judges]

Rural Utilities Act (R-21), s. 16(1)(j)

Technical Institutes Act (T-3), s. 44

Universities Act (U-3), s. 38

MISCELLANEOUS PROVISIONS

Change of Name Act (C-7)

Provisions for changing the name of the child of a deceased spouse (s. 7) and of the spouse of a deceased spouse (s. 10).

Child Welfare Act (C-12)

Section 7 provides for emergency care for a child in need of protective services because the child's guardian has died. Section 42 grants certain powers to the Director where a child dies who is the subject of a permanent or temporary guardianship order.

Health Professions Act (H-7)

The registrar of a regulated profession may cancel the registration and practice permit of a deceased member: s. 43(6).

International Conventions Implementation Act (I-6)

Part 1 and Schedule 1 implement the "Convention on the Law Applicable to Trusts and on their Recognition". This affects international trusts, including trusts created on death. However, it does not apply to preliminary issues concerning the validity of wills or other acts by which assets are transferred to a trustee: article 4.

Part 3 and Schedule 3 implement the convention between Canada and Britain concerning "Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters". But this convention does not apply to judgments that determine succession to, or administration of, the estates of deceased persons: article 2(d)(iv).

Legal Profession Act (L-8)

The benchers may maintain a fund for relief of a deceased member's dependants (among others): s. 6(j).

Local Authorities Election Act (L-21)

Section 33 deals with what happens when a candidate dies.

Medical Profession Act (M-11)

The council may maintain a special fund for relief of a deceased member's dependants (among others): s. 32(1)(b).

Regulated Forestry Profession Act (R-13)

The registrar may cancel the registration and practice permit of a deceased member: s. 37(6).

Vital Statistics Act (V-4)

Sections 14-19 govern the registration of deaths: when, by whom, medical certificate, when medical examiner must investigate, necessity for burial permit.

Section 30(6): death certificate shall not disclose cause of death except to adult next of kin, by court order or on the Minister's authority.

Section 43: offence to transport a dead body outside Alberta without a burial permit.

Senatorial Selection Act (S-5)

A deceased candidate's deposit is to be refunded to the personal representative: s. 12(3).

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